IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

REVIEW PETITION NO.176 OF 2006

IN

WRIT PETITION NO.1184 OF 2006

Smt. Subhadra M. Dayashankarlal
& Ors. .... Applicants

Vs.

Parshuram V. Choudhary & Ors. .... Respondents

Sarvasri A.L. Patki with R.D. Mishra for
the Applicants.
Shri G.S. Bhat for the Respondent Nos.1
to 16.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: DECEMBER 15, 2006

P.C:

1. Heard the learned Advocate for the applicants and the original petitioners. The applicants by this application seek to review the Judgment dated 9-10-2006 passed in Writ Petition No.1184 of 2006. The contention on behalf of the applicants is that there is an error apparent on the face of the record in the said Judgment

in as much as that the order which was sought to be challenged in the Writ Petition No.1184 of 2006 was no more in existence and it had merged in the order passed by the authority consequent to remand under the said order and this fact was suppressed by the petitioners in the petition even though it was to their knowledge. The applicants could not bring this fact to the notice of the Court on the day when the petition was disposed of as it was not to their knowledge on that day and it was revealed to them subsequently and after obtaining the copy of the representation made by some of the occupants of the area on 14-10-2003, addressed to the Deputy Collector, Bhandup, Mumbai. Out of the 74 signatories to the said representation, they included the petitioner Nos.11, 12, 14, 15 and 16.

2. The law on the point of jurisdiction of the Court to review its own Judgment or Order is well-settled. The fact that some of the petitioners had made representation to the Deputy Collector on 14-10-2003 and that discloses knowledge to those petitioners about the proceedings in the Appeal No.450 of 1978, which was disposed of on 3-10-1997, that itself does not amount to an error apparent on the face of the record. Undisputedly, the Judgment dated 9-10-2006 in Writ Petition No.1184 of 2006 was passed on account of failure on the part of the Appellate Authority to comply

with the mandatory requirement of Section 4(4) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, hereinafter called as "the sad Act" and relying upon the decision in **Satish B. Kadhe and others v. Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Tribunal, Bombay,** reported in 1997 (1) Mh.L.J. 107. Having found that the Appeal was disposed of without complying with the said mandatory requirement under Section 4(4) and on that count there was no notice issued giving proper opportunity to the respondents in the Appeal to put forth their contention in the matter, the order dated 3-10-1997 passed in the said Appeal was set aside. Merely because some of the petitioners indirectly had knowledge about the proceedings in the Appeal, that itself does not amount to compliance of the mandatory requirement under Section 4(4) of the said Act by the Appellate Authority. The Judgment dated 9-10-2006 is essentially on account of failure on the part of the Appellate Authority to comply with its statutory obligation. Merely because indirectly or through some other source some of the parties had knowledge about the proceedings in the Appeal, that itself will not remedy the breach on the part of the Appellate Authority nor it will validate the proceedings before the Appellate Authority in the absence of compliance of the mandatory provisions of the said Act by the Appellate Authority.

Being so, mere knowledge to some of the petitioners cannot amount to error apparent on the face of the record, more particularly in view of the fact that the order was passed on account of failure on the part of the Tribunal to comply with the mandatory requirement of the statutory provision.

3. The applicants may be justified in contending that fairness required on the part of the petitioners to reveal the said fact to the Court in the said petition. However, that itself cannot be a ground for reviewing the Judgment of 9-10-2006, which is apparently passed for the reasons stated above.

4. The contention that the order dated 3-10-1997 was not in existence on the day when the petition was filed or when it was disposed of by this Court, is totally devoid of substance. Once it is not in dispute that the petitioners to the petition were not notified in terms of the provisions of Section 4(4) of the said Act, it cannot be said that any proceedings which have proceeded consequent to the order dated 3-10-1997 would result in nullifying the effect of the said order as against the petitioners in the said petition. Any proceedings which have taken place consequent to the said order dated 3-10-1997 cannot be binding on the petitioners in the said petition on account of non-compliance of the

provisions of Section 4(4) of the said Act by the Appellate Authority. Being so, the petitioners were justified in challenging the said order and it cannot be said that the said order was non est as far as the petitioners are concerned, either on the day of filing of the petition or on the date of the disposal of the petition.

5. As no other ground is disclosed so as to interfere in the Judgment in exercise of powers of review, the application fails and is hereby rejected.

(R.M.S. Khandeparkar, J.)

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